

San Diego City Attorney
Community Forum
March 23, 2005

FEDERAL COURT RULES SALE OF CROSS UNCONSTITUTIONAL

 "The second sale of the Mt. Soledad land on which the cross stands was structured to provide a direct, immediate, and substantial financial advantage to bidders who had the sectarian purpose of preserving the cross. For that reason, the sale violated article XVI, section 5, of the California Constitution."

FEDERAL COURT LEAVES IT TO PARTIES TO CURE VIOLATION

"No doubt there are several possible ways to cure this violation. We leave it to the parties and to the district court, in the first instance, to devise a remedy for the constitutional violation"

Paulson v. City of San Diego, 9th Circuit en banc Ruling, June 26, 2002

CITY COUNCIL AGREES TO SETTLE IF PROP K FAILS

- "Should voters reject the proposal [Proposition K], City Attorney shall enter into the settlement agreement now with Mt. Soledad Memorial Association and Plaintiffs."
- Yea Votes: Councilmembers Lewis, Peters, Maienschein, and Madaffer and Mayor Murphy
- Nay Votes: Councilmembers Zucchet, Frye, and Inzunza.
- Not Present: Atkins

Council Minutes: July 27, 2004

VOTERS REJECT PROP K

Proposition K: City of San Diego Authorized to Sell Portion of Mount Soledad Natural Park

No 256,745 59.18%

Yes 177,062 40.82%

General Election: November 2, 2004 Vote

CITY COUNCIL REJECTS TRANSFER TO FEDERAL GOVERNMENT

Decline the Offer of the Federal Government to Transfer the Mount Soledad Cross

- Yea Votes: Councilmembers Peters, Zucchet, Atkins, Frye, and Inzunza
- Nay Votes: Councilmembers Maienschein and Madaffer and Mayor Murphy
- Not Present: Young

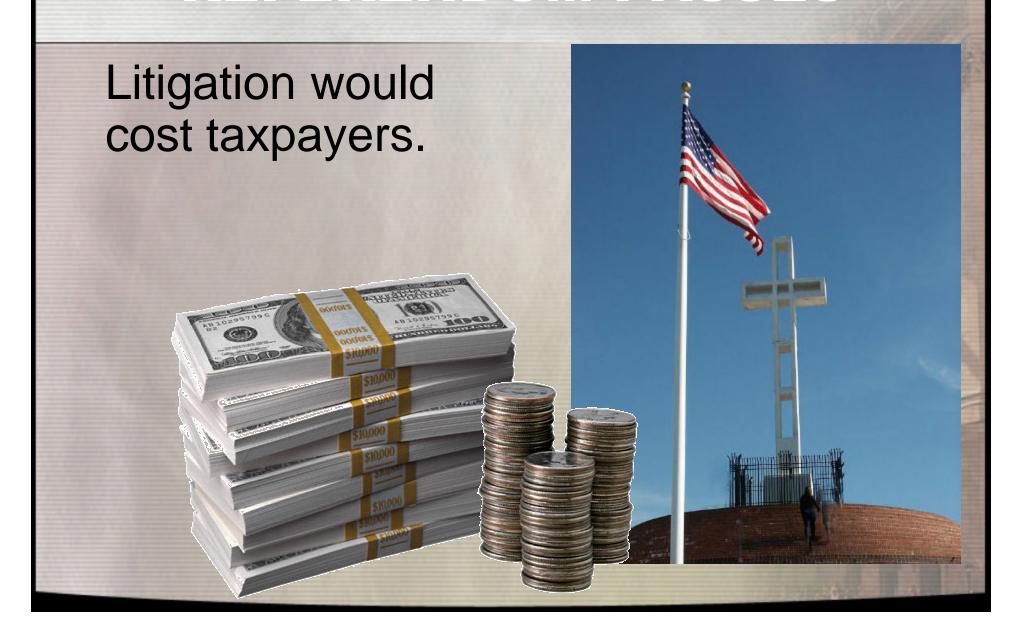
Council Minutes: March 8, 2005

VOTERS' RIGHT TO REFERENDUM

- Enacting the law by referendum may not cure the Constitutional defect.
- "It is irrelevant that the voters rather than a legislative body enacted this law because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation."

Citizens Against Rent Control/Coalition for Fair Housing v City of Berkeley, 454 U.S. 290 (1981)

REFERENDUM PASSES



PANEL MEMBERS

- Joseph J. Darby, Retired Professor of Law, USD
- Marilyn Ireland, Professor of Constitutional Law, California Western School of Law
- Charles LiMandri, Attorney, Thomas More Society
- Jim McElroy, Attorney for Plaintiff Philip Paulson
- Brian Wildenthal, Professor of Constitutional Law, Thomas Jefferson School of Law
- Pete Lepiscopo, Pacific Justice Institute

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